S.B. Civil Writ Petition No.950/2005

State of Rajasthan & Ors.

vs

Vasudev Upadhyay & Anr.

DATE OF ORDER : - 20.4.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.Rampal Singh Choudhary, AAG, for the petitioner.
Mr.RK Singhal, for the respondents.

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Heard learned counsel for the parties.

The petitioner has challenged the order of the Arbitral Tribunal dated 9.3.2004 by which the learned Arbitrator rejected the petitioner's preliminary objection about the proceedings with the arbitral proceeding in view of the fact that according to petitioner, the respondent gave receipt of full and final satisfaction of his claim, therefore, the Arbitrator cannot decide any dispute as the matter has been settled between the parties.

It will be worthwhile to mention here that the Arbitrator was appointed by the designated Judge of this Court under the provisions of the Arbitration and Conciliation Act, 1996. That order of the learned designated authority dated 28th May, 2002 was challenged by filing DBCW

No.3097/2002. The Division Bench vide order dated 27th August, 2002 after holding that the objection about the jurisdiction of the Arbitrator or authority of the arbitrator to decide the dispute has rightly been left open to be decided by the sole arbitrator. The petitioner preferred SLP against the said order of the Division Bench, which was dismissed by the Hon'ble Supreme Court vide order dated 8.1.2003.

In these circumstances, the petitioner submitted objection about jurisdiction of the Arbitral Tribunal before the learned Arbitrator and the Arbitrator rejected the said objection of the petitioner.

According to learned counsel for the petitioner in view of the various decisions, the Arbitrator could not have proceeded to decide the matter as the Arbitrator lacks jurisdiction in view of the fact that the respondent has given a receipt of total satisfaction of his claim and that action is a voluntary action of the respondent and in view of the judgment of the Hon'ble Supreme Court delivered in the case of M/s. P.K. Ramaiah & Company Vs. Chairman & Managing Director, National Thermal Power Corpn. reported in 1994 Supp. (3) SCC 126,the arbitrator should have rejected the claim of the respondent.

It appears from the record itself that the objection of the petitioner was dismissed by the Arbitral Tribunal on 9th March, 2004.

The said order has been challenged by the petitioner after seven months by filing the present writ petition. I do not find any sufficient reason for not filing the writ petition in time, if the petitioner was, in fact, aggrieved against the said order.

Be that as it may, fact further is that the petitioner on the pretext of pendency of this writ petition sought several adjournment before the Arbitrator and now a more than one year has already passed. It will be worthwhile to mention here that instead of the fact that this Court grants permission for listing the case on the same day on asking still the case has been got listed by the petitioner in court on 18.2.2005 only and by that time more than one year has already passed. Looking to the conduct of the petitioner, this Court is not inclined to interfere in the impugned order of the Arbitrator as the conduct of the petitioner disentitles the petitioner from invoking equitable jurisdiction under Article 226/227 of the Constitution of India.

Apart from above, the Section 16(5) and (6) clearly provides that when the objection about the jurisdiction of the Arbitral Tribunal is rejected, the Arbitral Tribunal shall pass the award and the order passed under Section 16 of the Arbitration and Conciliation Act, 1996 has been made appealable specifically by sub-section (6) of the Act of 1996 and, therefore, in the facts of this case, it will not be in the interest of

justice to interfere in the arbitral proceedings pending before the Arbitral Tribunal.

The arbitration proceedings required to be decided expeditiously otherwise the whole purpose of even enacting the Act itself will be frustrated.

In view of the above without commenting on merit of the issue, the writ petition of the petitioner is dismissed for the reasons mentioned above.

(Prakash Tatia), J.

c.p.goyal/-